

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2013-27

JOSE A. RODRIGUEZ

21873 Alamogordo Road
Saugus, CA 91350

Certified Public Accountant Certificate No.
102294

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on APRIL 28, 2013

It is so ORDERED MARCH 29, 2013

Geslin J. LeMenne

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2013-27

12 **JOSE A. RODRIGUEZ**

13 21873 Alamogordo Road
14 Saugus, CA 91350

15 Certified Public Accountant Certificate No.
102294

16 Respondent.

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 In the interest of a prompt and speedy resolution of this matter, consistent with the public
19 interest and the responsibility of the California Board of Accountancy of the Department of
20 Consumer Affairs the parties hereby agree to the following Stipulated Surrender of License and
21 Order which will be submitted to the CBA for approval and adoption as the final disposition of
22 the Accusation.

23 **PARTIES**

24 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
25 Accountancy. She brought this action solely in her official capacity and is represented in this
26 matter by Kamala D. Harris, Attorney General of the State of California, by Katherine Messana,
27 Deputy Attorney General.
28

2. Jose A. Rodriguez (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about August 5, 2008, the California Board of Accountancy issued Certified Public Accountant Certificate No. 102294 to Jose A. Rodriguez. The Certified Public Accountant Certificate expired on August 31, 2011, and has not been renewed.

JURISDICTION

4. Accusation No. AC-2013-27 was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 1, 2013. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2013-27 is attached as **Exhibit A** and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. AC-2013-27. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2013-27, agrees that cause exists for discipline and hereby surrenders his Certified Public Accountant Certificate No. 102294 for the CBA's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the CBA to issue an order accepting the surrender of his Certified Public Accountant Certificate without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Order:

///

///

///

ORDER

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 102294, issued to Respondent Jose A. Rodriguez, is surrendered and accepted by the California Board of Accountancy.

1. The surrender of Respondent's Certified Public Accountant Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the California Board of Accountancy.

2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.

3. Respondent shall cause to be delivered to the CBA his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the CBA shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2013-27 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$2,679.19 prior to issuance of a new or reinstated license.

///

///

///

///

///

///

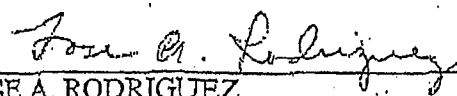
///

///

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Accountancy.

DATED:

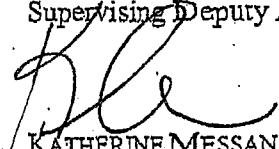
2/27/2013
JOSE A. RODRIGUEZ
RespondentENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General


KATHERINE MESSANA
Deputy Attorney General
Attorneys for Complainant

LA2012508239
51241827.doc

Exhibit A

Accusation No. AC-2013-27

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KATHERINE MESSANA
Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

8 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2013-27

12 **JOSE A. RODRIGUEZ**

13 21873 Alamogordo Road
14 Saugus, CA 91350

A C C U S A T I O N

15 Certified Public Accountant Certificate No.
102294

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Patti Bowers ("Complainant") brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.
22 2. On or about August 5, 2008, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number 102294 to Jose A. Rodriguez ("Respondent"). The
24 Certified Public Accountant Certificate expired on August 31, 2011, and has not been renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

- 26 3. This Accusation is brought before the California Board of Accountancy ("CBA"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

1 4. Section 5109 of the Code states:

2 "The expiration, cancellation, forfeiture, or suspension of a license,
3 practice privilege, or other authority to practice public accountancy by operation of
4 law or by order or decision of the board or a court of law, the placement of a license
5 on a retired status, or the voluntary surrender of a license by a licensee shall not
6 deprive the board of jurisdiction to commence or proceed with any investigation of or
7 action or disciplinary proceeding against the licensee, or to render a decision
8 suspending or revoking the license."

9 5. Section 118, subdivision (b), of the Code also provides that the suspension,
10 expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to
11 proceed with a disciplinary action during the period within which the license may be renewed,
12 restored, reissued or reinstated.

13 6. Section 5100 states, in pertinent part:

14 "After notice and hearing the board may revoke, suspend, or refuse to
15 renew any permit or certificate granted under Article 4 (commencing with Section
16 5070) and Article 5 (commencing with Section 5080), or may censure the holder of
17 that permit or certificate for unprofessional conduct that includes, but is not limited
18 to, one or any combination of the following causes:

19 (a) Conviction of any crime substantially related to the qualifications,
20 functions and duties of a certified public accountant or a public accountant.

21 ...

22 (g) Willful violation of this chapter or any rule or regulation promulgated
23 by the board under the authority granted under this chapter.

24 ...

25 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

26 ...

27 (k) Embezzlement, theft, misappropriation of funds or property, or
28 obtaining money, property, or other valuable consideration by fraudulent means or
29 false pretenses."

30 7. Section 5106 states:

31 "A plea or verdict of guilty or a conviction following a plea of nolo
32 contendere is deemed to be a conviction within the meaning of this article. The
33 record of the conviction shall be conclusive evidence thereof. The board may order
34 the certificate or permit suspended or revoked, or may decline to issue a certificate or
35 permit, when the time for appeal has elapsed, or the judgment of conviction has been
36 affirmed on appeal or when an order granting probation is made, suspending the
37 imposition of sentence, irrespective of a subsequent order under the provisions of
38 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty
39 and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the

accusation, information or indictment.”

8. Section 490 of the Code states, in pertinent part:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.”

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 99 provides:

“For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

(b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;

(c) Gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;

(d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.”

COST RECOVERY

10. Section 5107(a) of the Code states:

“The executive officer of the board may request the administrative law

1 judge, as part of the proposed decision in a disciplinary proceeding, to direct any
2 holder of a permit or certificate found to have committed a violation or violations of
3 this chapter to pay to the board all reasonable costs of investigation and prosecution
4 of the case, including, but not limited to, attorneys' fees. The board shall not recover
5 costs incurred at the administrative hearing."

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of a Substantially Related Crime)

8 11. Respondent is subject to disciplinary action under section 5100, subdivision (a) and
9 section 490 of the Code in conjunction with California Code of Regulations, title 16, section 99 in
10 that Respondent was convicted of a crime substantially related to the qualifications, functions and
11 duties of a certified public accountant, as follows:

12 12. On or about May 20, 2011, Respondent pled guilty to and was convicted of one
13 felony count of violating Penal Code section 487(a) [Grand Theft by Embezzlement]. As part of
14 the plea, Respondent admitted the allegation pursuant to Penal Code section 186.11(a)(3)
15 [Aggravated White Collar Enhancement] in the criminal proceeding entitled *The People of the*
16 *State of California v. Jose Angel Rodriguez* (Super. Ct. of California, County of Los Angeles,
17 2011, Case No. BA381390). The court denied probation and ordered Respondent to be
18 imprisoned in a state prison for a total of three (3) years. The Respondent was also ordered to pay
19 restitution to the victim, The Athenaeum at Caltech, in the amount of \$377,853.33. The
20 circumstances underlying the conviction are that on or between May 1, 2005, and March 1, 2007,
21 and while Respondent was an agent, servant and employee of The Athenaeum at Caltech, did
22 unlawfully take from The Althenaeum at Caltech money and personal property of a value
23 exceeding four hundred dollars (\$400.00)

24 SECOND CAUSE FOR DISCIPLINE

25 (Act Involving Fiscal Dishonesty)

26 13. Respondent is subject to disciplinary action under section 5100, subdivision (i) of the
27 Code in that Respondent committed an act involving fiscal dishonesty when he did unlawfully
28 take from The Althenaeum at Caltech money and personal property of a value exceeding four
hundred dollars (\$400.00). The act is described in more particularity in paragraph 12 above,
inclusive and hereby incorporated by reference.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Embezzlement)**

3 14. Respondent is subject to disciplinary action under section 5100, subdivision (k) of the
4 Code in that on or between May 1, 2005, and March 1, 2007, Respondent committed an act of
5 embezzlement when he did unlawfully take from The Althenaeum at Caltech money and personal
6 property of a value exceeding four hundred dollars (\$400.00). The act is described in more
7 particularity in paragraph 12 above, inclusive and hereby incorporated by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Willful Violation of the Licensing Chapter)**

10 15. Respondent is subject to disciplinary action under section 5100, subdivision (g) of the
11 Code in that Respondent committed a willful violation of the licensing chapter when he was
12 convicted of a substantially related crime, committed an act involving fiscal dishonesty and
13 embezzlement. The violations are described in more particularity in paragraphs 11 through 14
14 above, inclusive and hereby incorporated by reference.

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

PRAYER

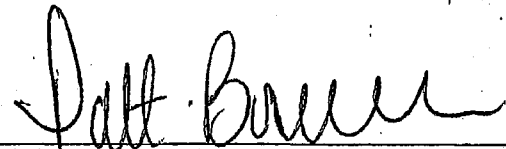
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 102294, issued to Jose A. Rodriguez;

2. Ordering Jose A. Rodriguez to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

3. Taking such other and further action as deemed necessary and proper.

DATED: 1-18-2013



PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

LA2012508239
51206751.doc